

**BEFORE THE STATE BOARD OF MEDIATION  
STATE OF MISSOURI**

TEAMSTERS, LOCAL 41,	)	
	)	
Petitioner,	)	
	)	
v.	)	Public Case No. R 97-029
	)	
CITY OF LIBERTY,	)	
	)	
Respondent.	)	

**JURISDICTIONAL STATEMENT**

The State Board of Mediation is authorized to hear and decide issues concerning appropriate bargaining units by virtue of Section 105.525 RSMo. 1994. This matter arises from the election petition of Teamsters, Local 41 (hereinafter referred to as the Union) to represent certain employees of the City of Liberty (hereinafter referred to as the City). A hearing on the matter was held on June 6, 1997, in Liberty, Missouri, at which representatives of the Union and the City were present. The case was heard by State Board of Mediation Chairman Francis Brady, employee member Joel Rosenblit and employer member Linda Cooper. At the hearing the parties were given full opportunity to present evidence and make their arguments. Afterwards, the parties filed briefs. Rosenblit subsequently resigned from the Board. Following his resignation, the record in this case was submitted to another employee member of the Board, LeRoy Kraemer. After a careful review of the evidence and arguments of the parties, the Board sets for the following Findings of Fact, Conclusions of Law, Order and Direction of Election.

**FINDINGS OF FACT**

The City of Liberty operates the following seven departments: Administration, Community Development, Public Works, Fire, Police, Parks and Finance. None of the employees in the foregoing departments are currently represented by a labor organization. Thus, no bargaining

units currently exist. This case involves employees from three of the City's department: Public Works, Parks and Finance.

The Public Works Department will be reviewed first. That department's organizational structure is as follows. The department is headed by Steve Hanson. He reports directly to the city administrator, Patty Gentrup. Underneath Hanson is the public works superintendent, Bob Blackburn. Underneath Blackburn are two crew chiefs. Underneath them are the department's maintenance workers and mechanics. The Public Works Department is made up of several different divisions with the divisions pertinent here being water/sewer line maintenance and street maintenance. These two divisions are also known as utilities and streets, respectively. The water/sewer line maintenance division (i.e. the utilities division) is responsible for maintaining the city's water and sewer system. This involves repairing water and sewer mains, replacing valves and fire hydrants, and rebuilding fire hydrants, sewer mains and man holes. The street maintenance division (i.e. the streets division) is responsible for the maintenance and construction of streets, alleys, rights of way, traffic signals, street signs, and the city's two cemeteries. Superintendent Blackburn is in charge of these two divisions. The next highest ranking employee in these two divisions is a crew chief. Bob Beaty is the crew chief for the water/sewer line maintenance division and Mike Pence is the crew chief for the street maintenance division. Beaty and Pence share oversight responsibility for two mechanics. Beaty oversees five employees in addition to the mechanics. These five employees are divided each day into two or three work crews. As an example, one employee may be locating lines for contractors, two employees may be making water taps into the main water line, and two employees may be flushing sewers. Pence oversees nine employees in addition to the two mechanics. The employees which Pence oversees are divided into different crews each day depending on the work to be done. On some days, there might be as many as five crews. Normally though, there are just two crews: once

does street repair while the other crew seals street cracks, does paint striping, sign work, and right-of-way mowing.

The Parks Department will be reviewed next. That department's organizational structure is as follows. The department is headed by Chris Diehl. He reports directly to the city administrator. Underneath Diehl is the parks superintendent, Brad Sinn. Underneath Sinn is the department's one crew chief, Duane Carney. Underneath him are the department's maintenance workers. The Parks Department is made up of several different divisions with the divisions pertinent here being maintenance and operations. These two divisions are responsible for the construction, maintenance and related service activities (such as mowing grass) connected to the City's ten parks. This includes not only the parks themselves but also community centers, athletic fields, and the City's recreational programs. Superintendent Sinn is in charge of these two divisions. The next highest ranking employee for these two divisions is crew chief Carney. He oversees four full-time maintenance workers and three part-time employees. The full-time employees do not work together in one crew; instead, they usually work separately: two maintain ball fields, one handles trash control, and one does mowing.

The Finance Department will be reviewed next. That department's organizational structure is as follows. The department is headed by Art DeWitt. He reports directly to the city administrator. Underneath DeWitt is the assistant finance director, Patty Good. The Finance Department is made up of several different divisions with the division pertinent here being utility billing. This division is responsible for generating revenue for the city by reading and servicing meters. The highest ranking employee in the utility billing division is the lead water clerk, Chris Shinneman. He supervises five employees: three office workers, a meter service technician (Michelle Martin) and a meter reader (Sheila Zismer). Only the latter two are involved herein. The meter service technician is responsible for various activities related to the operation and

maintenance of utility service meters including the installation and activation of utility meters, turning on and off water service, and responding to utility customer requests for service. She spends almost the entire day performing these duties. She usually works alone. If she needs assistance with same, she contacts the line maintenance division and a maintenance worker assists her. In addition to these tasks, she also picks up the City's mail at the post office each morning and sorts it. The meter reader reads meters all day. This involves reading and recording usage amounts from customer utility meters and performing various tasks related to the basic maintenance of utility meters. Like the meter service technician, the meter reader also works alone. The meter reader performs the duties of the meter service technician in the event the meter service technician is absent from work. When both the meter service technician and the meter reader are unavailable to repair meters or turn off water, Shinneman dispatches line maintenance employees to do that work.

The composition of the bargaining unit is in issue herein. The Union proposes including the public works employees, parks employees, the meter reader, and the meter service technician in a single bargaining unit. The Union believes these employees share a community of interest. The City contends that the meter reader and the meter service technician do not share a community of interest with the public works employees. The City also contends that the parks employees do not share a community of interest with the public works employees either. Thus, the City proposes a unit of just public works employees, and excludes the meter reader, the meter service technician, the parks employees from same.

The record evidence concerning the differences between these employee groups is as follows.

At the start of each work day, all three departments' employees report to different geographical locations. The public works employees report to the Public Works facility located on

Suddarth Street, the parks employees report to the Park Maintenance facility located at the city's main park on Highway 291, and the meter reader and the meter service technician initially go to the Public Works facility to get their work pick-up trucks which are parked there and then report to the Finance Department which is located at City Hall.

During each work day, parks employees work only at the city's parks. The meter reader, the meter service technician and the public works employees work throughout the city at separate work sites.

There is no common supervision between the Public Works, Parks and Finance Departments. Each department is headed by a different person. These department heads supervise only the employees in their department; they do not supervise anyone outside their department. The same is true of the department superintendents. The same is true of the crew chiefs. The two chiefs in Public Works do not oversee anyone in the Parks or Finance Departments. The crew chief in the Parks does not oversee anyone in the Public Works or Finance Departments.

The employees in the three departments are not transferred or loaned from one department to another to help out. Thus, none of the employees are temporarily assigned to work in a different department. Although public works employees used to be temporarily assigned to read meters, this has not happened in over a year. Now when the meter reader needs help reading meters, the city uses an outside contractor for same.

There are different job qualifications and training for the employees in the departments. The public works employees need a commercial driver's license as a qualification for their job; all the other above referenced employees do not. The public work employees operate heavy equipment; all the other above referenced employees do not.

The record evidence concerning the similarities between these employee groups is as follows.

The public works employees, parks employees, the meter service technician, and meter reader spend most of the day working outdoors at various locations throughout the City. They all travel daily from site to site to complete their job duties.

The employees in the Public Works and Parks Departments use power equipment and mechanized construction equipment to perform their job duties. The Public Works Department sometimes borrows light equipment such as a tractor from the Parks Department. Conversely, the Parks Department sometimes borrows heavy equipment such as a grader or truck from the Public Works Department. In the latter instance, the equipment which is borrowed must be operated by a street maintenance worker because the park employees are not qualified to operate heavy equipment. When this happens, the street maintenance worker and the park employees work side by side on the project.

Both the street maintenance workers and the park maintenance workers mow grass, remove brush, and remove snow. When doing snow removal, a parks employees operates a snowplow while a public works employee drives behind the plow operator to salt and sand.

The public works employees and the parks employees do not regularly work together. However, they do work together annually preparing the ball fields for use. They also work together annually on the City's "Spring on the Square" festival. Both groups of employees have worked together to repair water fountains and hydrants in City parks, and to reconstruct shelter houses in City parks and playground facilities.

The line maintenance workers and the meter service technician deal with the City's water supply. They have contact with each other every day. They all install, repair, and replace water meters. They use similar tools to perform these tasks. The line maintenance employees

frequently change meters when the meter service technician cannot. The water meters and paperwork associated with installing new meters are kept at the Public Works facility. Line maintenance workers also assist the meter service technician dig out meter pits, raise meters, locate curb boxes, and thaw out frozen meters in the winter. The meter service technician and the line maintenance crew chief have worked together to install radio read and touch read meters and change out larger meters.

The meter reader also has contact with the line maintenance workers, but less so than the meter service technician does. The meter reader requires assistance from line maintenance employees an average of three or four times a month to help locate curb boxes, change out meter lids, and replace meter yolks. The meter reader has been instructed by her supervisor that if she finishes reading meters early, she is to go to work with the line maintenance employees so that she learns more about the utilities division and how it relates to water meters. To date though, this has not occurred. The meter reader does not have any contact with street division employees or Park Department employees.

The meter service technician and the Parks Department employees do not regularly work together. When they do though it has involved the following: locating water meters at City parks, pumping out meter pits, pulling meters, repairing meter problems at community centers, and repairing leaks in the irrigation system used to maintain ground cover in City parks and sports playing fields.

Attention is now turned to the record evidence concerning the crew chiefs. As previously noted, there are three crew chiefs: one in the Parks Department and two in the Public Works Department (one in the utilities division and one in the streets division). The status of all three is at issue herein. The City contends they are supervisors and should be excluded from any

bargaining unit, while the Union contends they are not supervisors and should be included in any bargaining unit.

Job assignments are handled as follows in the Public Works and Parks Departments. In the Public Works Department, a departmental work plan exists which lists the projects which are to be completed. As an example, one item on the street division's work plan is to chip and seal 17 miles of street. Each day, the crew chiefs pick work projects to do from this departmental work plan. Thus, the crew chiefs decide what work is to be done from the departmental work plan. However, several times a week superintendent Blackburn overrules the crew chiefs' decisions concerning what work to do, and directs them to do something else. In the Parks Department, crew chief Carney decides what work is done. After the work projects are finalized, the crew chiefs assign work to the employees they oversee. They do this in the following way. In the Parks Department, there usually are not work crews, so the crew chief assigns individual employees to projects where they work alone. The Parks Department maintenance workers have pre-set job assignments since much of the work they do (i.e. mowing, trash control, and maintaining ball fields) is repetitions. For example, when they finish mowing, they start all over again. If crew chief Carney wants to move an employee from one job to another, he can do so. In the Public Works Department, the crew chiefs first assign their maintenance workers to work crews. If they want, a crew chief can move an employee from one crew to another. The crew chiefs then direct the crews to perform certain projects. In the street division, crew chief Pence discusses these work projects with his work crews but does not give them detailed instructions about how they are to do the work or who is to do what specific tasks. The reason Pence does not give the employees detailed instruction about how they are to do the work is because they usually already know how to perform the work assigned to them. The reason Pence does not tell the crew members who is to do what specific task is because the employees rotate job



assignments among themselves. As Pence put it, this job rotation ensures that “nobody gets stuck doing the same thing.” This job rotation is done by the employees themselves without Pence’s involvement. In the utilities division, crew chief Beaty assigns work to his two or three crews depending on the jobs which are to be done that day. Beaty distributes work based on the number of people needed to complete a particular job, not on the basis of skill. Like Pence, Beaty does not assign specific employees to do specific tasks. Instead, the line maintenance employees, like the street employees, rotate job assignments among themselves so that a single employee does not have to clean out sewers all the time. This job rotation is done by the employees themselves without Beaty’s involvement.

After the work is assigned, the crew chiefs oversee the work done by the maintenance workers and ensure that it (the work) is performed satisfactorily. If a question arise at the job site about the work to be performed, the crew chief answers it. Some of the Parks Department maintenance workers see Carney for about five minutes several times a day. During these brief visits, Carney inquires whether the worker needs help and how the work is progressing. The other two crew chiefs also periodically check on their crew members and the work they are performing.

When the crew chiefs are at a job site with their crew members, they do not just watch their crew members work. Instead, they work side by side with their crew members doing the same work as them. The amount of time which the crew chiefs spend doing hands-on work as opposed to doing other things varies depending on the crew chief in question. Carney spends about 50% of his time in the field doing work which is identical to that performed by the park maintenance workers (mainly working on athletic fields and making repairs). Pence spends about 30% of his time in the field doing work which is identical to that performed by the street

maintenance workers. Beaty spends about 40% of his time in the field doing work which is identical to that performed by the line maintenance workers (mainly locating lines).

In addition to doing the work identified above, the crew chiefs also have the following job responsibilities: they call employees in to work in emergencies, they train new employees, they maintain the inventory of supplies for their department and order needed parts, and they complete the following work records. First, they sign the time sheets which the employees keep and forward them to the department superintendent. The employees are paid based on these time sheets. Second, the crew chiefs keep a record known as the daily worksheet which identify the jobs which employees worked on. Third, when employees use sick leave, they report their absence to their crew chief who records their absence. Technically, the crew chief does not approve or disapprove sick leave; instead, they simply record the employee's usage of same. Fourth, in the Parks Department, crew chief Carney is involved in scheduling vacation and keeps track of when an employees is on vacation.

Crew chief Beaty was promoted to crew chief from within the utilities division. He is that division's most senior employee. The other two crew chiefs were hired from the outside. When a crew chief is absent, a senior department/division employee fills in for them.

All the crew chiefs have their own office, desk, and telephone. One senior line maintenance worker, Brent Ellison, also has a desk. Ellison's desk is located in the same room as Beaty's. Two of the crew chiefs have their own computers.

The crew chiefs decide whether overtime work is needed to complete a project. If they decide it is, they usually advise their department superintendent of same. Then, the crew chiefs direct their crew members to stay over and work overtime. When emergency overtime is necessary, the crew chiefs decide which employees will be called in to work it. When it comes to the assignment of recurring overtime such as weekend on-call duty, the departments have

developed automatic rotation systems so that the crew chief is not involved in assigning that particular overtime. The department superintendent controls overtime use. If the department superintendent decides that too much overtime is being used, the superintendent instructs the crew chief not to work overtime and the crew chief complies with that directive.

Employees are required to schedule their vacation in advance. The department superintendent approves vacation requests. In emergencies though, crew chiefs can approve a single day of vacation.

Transfers of employees from one department to another are handled by department heads, not crew chiefs. Thus, crew chiefs cannot transfer employees between departments on their own volition. The crew chief for the street maintenance division may borrow employees from the line maintenance division and vice-versa, but only with the permission of the department superintendent.

The City's Personnel Manual provides that department heads are to evaluate their employees semi-annually. In the Public Works and Parks Departments though, responsibility for evaluation has been delegated to the department superintendent and crew chief(s). Thus, in those two departments, the department superintendent and crew chief(s) annually evaluate employees. They do so as follows. The crew chief(s) and department superintendent each separately fill out a preprinted evaluation form for the employees which are overseen by the crew chief. This involves numerically rating the employee's job performance with regard to specified criteria. Thus, the crew chief and the department superintendent evaluate the employee independent of one another. These two completed evaluations are then submitted to the City Personnel Department which then processes these separate ratings through a computer program which produces a mathematical score. The program weighs the crew chief's input at 60% and the superintendent's input at 40%. After this score is received back from the Personnel

Department, the crew chief and the superintendent together complete another portion of the evaluation document which asks for narrative responses. They draft their written comments for this portion of the evaluation jointly. In the Parks Department, the superintendent then reviews the completed evaluation with the employee. In the street division, crew chief Pence then reviews the completed evaluation with the employee. In the utilities division, crew chief Beaty then reviews the completed evaluation with the employee. After the evaluation is reviewed with the employee, the employee can make a written reply to same. The department head then reviews the evaluations completed by the department superintendent and crew chief(s). If he thinks an individual evaluation is too high or too low, he sends it back to be changed. On one occasion, the head of the Public Works Department had all the evaluations in the department redone because he felt that the ratings given to employees were too low when compared with the scores given to employees in other departments.

The evaluation affects the employee's ultimate salary increase for the year. For example, if an employee is rated high on the evaluation, they receive a higher salary increase than if they were rated lower. The record does not contain any examples though which illustrate how this works in practice. Insofar as the record shows, it is not necessary to get a specific mathematical score in order to be eligible for a pay raise. Likewise, there is no evidence in the record that achieving a particular score on the evaluation guarantees a particular raise. The City Council sets the overall level for any pay increase. The city administrator then decides what individual increases will be (i.e. how much of a raise each employee receives).

Crew chief Beaty once recommended that an employee's classifications status be changed. Specifically, he recommended that an employee who was a maintenance worker II be changed to a maintenance work III. This recommendation was then reviewed by the department head who made the final decision concerning same. After the change was approved, the

employee received a pay increase. when the foregoing occurred, the City had three classifications for maintenance workers. Now, though, the City has just one classification for maintenance workers.

In most City departments, the hiring process works as follows: the department head screens the applications which are received, interviews the candidates deemed worthy, and recommends a finalist to the city administrator. In the Public Works and Parks Departments, the hiring process works as follows. The crew chiefs screen the applications which are received and select about five candidates to be interviewed. Thus, they cull out what they believe to be the top candidates. The department superintendent then completes the same task himself. Thus, he independently reviews the applications to also select candidates to be interviewed. An interview panel then interviews the candidates who made the initial cut. In the Public Works Department, the interviews are conducted by an interview panel composed of superintendent Blackburn and crew chiefs Pence and Beaty. In the Parks Department, the interviews are also conducted by a three member interview panel. The panel usually consists of superintendent Sinn, crew chief Carney, and a senior Parks Department maintenance worker. Following the interviews, the interview panel reaches a consensus on a finalist. Insofar as the record shows, a panel has never disagreed on who the finalist should be. The interview panel then jointly makes a recommendation to the department head regarding which candidate should be hired. Crew chief Pence has participated in five interview panels where the panel recommended that a specific candidate be hired. The panel's hiring recommendation is then taken to the city administrator by the department head. The city administrator makes the final decision concerning who to hire. The city administrator functions as the City's personnel officer. The city administrator interacts with just the department head in making the hiring decision. The crew chiefs do not have any

discussions with the city administrator concerning hiring. Thus, the city administrator never hears directly from the crew chiefs concerning who to hire.

With regard to discipline, the crew chiefs have issued verbal reprimands and are empowered to issue written reprimands although none have ever done so. Typically, if a crew chief believes that an employee has performance problems or that an employee's conduct is inappropriate, they report the matter to the department superintendent who then conducts his own investigation into same. Any discipline which follows would come from either the department superintendent or further up the chain of command--not the crew chief. The circumstances involved in the only documented instance of employee discipline in the Parks Department are as follows. The crew chief observed that an employee was having numerous performance problems. The crew chief brought these matters to the attention of the department superintendent who then investigated same. Following the investigation, the superintendent counseled the employee about the performance problems. The crew chief participated in these conferences. The employee resigned while management was still considering what formal discipline to impose on the employee. The circumstances involved in the only documented instance of employee discipline in the Public Works street maintenance division are as follows. The crew chief gave an employee a direct work order to read water meters which the employee refused to obey. The crew chief then reported the matter to the department superintendent. The department superintendent then gave the employee the identical work order which the employee refused for a second time. Afterwards, the employee was discharged. The crew chief did not make that decision though; the city administrator did. The record indicates that the street division crew chief had previously recommended that particular employee's termination on other occasions, but those previous recommendations had not been followed. The circumstances involved in the only documented instance of employee discipline in the Public Works line maintenance division are as follows. The

division had just acquired a new truck with a tilt bed when the operating employee raised the truck bed at the wrong time, damaging the truck bed. The crew chief recommended that the employee not be disciplined for the incident on the grounds that the employee had not been trained on the new vehicle. The department superintendent rejected that recommendation and imposed an unspecified discipline upon the employee.

City employees are paid pursuant to the city's pay plan. Under this system, each classification is assigned to certain salary band. All the salary bands, which are essentially pay grades, have a minimum and maximum rate. The record does not indicate how employees normally advance or move within the range. The position of meter reader is assigned to band number 106 where the monthly minimum rate is \$1530 and the monthly maximum rate is \$2066. The incumbent is currently paid \$1627 monthly. The position of meter service technician is assigned to band number 113 where the monthly minimum rate is \$1619 and the monthly maximum rate is \$2185. The incumbent is currently paid \$1799 monthly. The record does not indicate what band number the position of mechanic is assigned. One mechanic is paid \$1920 monthly and one is paid \$2450 monthly. The position of maintenance worker (both line, parks, and street) is assigned to band number 115 where the monthly minimum rate is \$1653 and the monthly maximum rate is \$2231. The 18 incumbent full-time maintenance workers are currently paid the following: one is paid \$1653 monthly, two are paid \$1703 monthly, one is paid \$1705 monthly, one is paid \$1713 monthly, two are paid \$1759 monthly, one is paid \$1776 monthly, one is paid \$1801 monthly, one is paid \$1812 monthly, two are paid \$1848 monthly, one is paid \$1907 monthly, one is paid \$1929 monthly, and four are paid \$2231 monthly. Overall, one is at the minimum rate and four are at the maximum rate with the rest in between. The record does not contain the wages currently paid to the three part-time parks maintenance workers. The position of crew chief is assigned to band number 127 where the monthly minimum rate is \$2004 and the

monthly maximum rate is \$2706. Carney is paid \$2104 monthly while Beaty and Pence are both paid \$2642 monthly. Since the maximum for band number 115 (the maintenance workers) is \$2231 while the minimum for band number 127 (the crew chiefs) is \$2004, a senior maintenance worker can be paid more than a crew chief. This has happened in the past. At present though, no maintenance worker is paid more than a crew chief.

### **CONCLUSIONS OF LAW**

In our view, there are two main issues to be decided in this case: 1) the composition of the bargaining unit; and 2) whether the three crew chiefs should be excluded as supervisors from the unit. These issues, along with various subissues that are subsumed therein, will be addressed below. Any matter not specifically addressed in the following discussion has been deemed to lack sufficient merit to warrant comment.

### **DISCUSSION CONCERNING APPROPRIATE UNIT**

This Board is charged with deciding issues concerning appropriate bargaining units by virtue of Section 105.525 RSMo 1986 wherein it provides: "Issues with respect to appropriateness of bargaining units and majority representative status shall be resolved by the State Board of Mediation." And appropriate bargaining unit is defined in Section 105.500(1) RSMo 1986 as:

A unit of employees at any plant or installation or in a craft or in a function of a public body which establishes a clear and identifiable community of interest among the employees concerned.

Missouri statutory law does not provide further guidelines for determining what constitutes a "clear and identifiable community of interest", nor does it set out any criteria as to the means to be used by the Board in resolving such issues. That being so, this Board long ago created its own criteria for determining whether the employees involved have a community of interest. The criteria, as set forth in AFSCME, Missouri State Council 72 v. Department of Corrections and Human Services, Case No. 83-002 (SBM), and other cases, are:

1. Similarity in scale or manner of determining earnings;



2. Similarity in employment benefits, hours of work, and other terms and conditions of employment;
3. Similarity in the kind of work performed;
4. Similarity in the qualifications, skills, and training of employees;
5. Frequency of contact or interchange among the employees;
6. Geographic proximity;
7. Continuity or integration of production processes;
8. Common supervision and determination of labor-relations policy;
9. Relationship to the administrative organization of the employer;
10. History of collective bargaining; and
11. Extent of union organization.

We use these criteria as a means of assessing whether the employees participate in a shared purpose through their employment and whether they share similar interests. However, the application of these criteria on a case-by-case approach does not produce hard and fast rules of universal applicability. For example, in some cases one of the criteria will take on paramount significance, while in other cases another criteria may predominate.

Before applying the above-noted factors to the record evidence, we have decided to make the following preliminary comments.

Our role in making bargaining unit determinations is not to decide which proposed unit is “the” appropriate unit or “the most” appropriate unit. Instead, our duty in all election cases is to decide whether a proposed unit is “an” appropriate unit.<sup>1</sup> This distinction is important because it means that the Petitioner does not have to request an election in the most appropriate unit that could be envisioned, either by the parties themselves or this Board. This Board has interpreted Section 105.525 to mean that there is a need for a mix of bargaining units which afford employees

the opportunity to be represented in workable units by unions of their own choosing, which may reasonably be expected to be concerned with the unique interest and aspirations of the employees in said unit. We recognize that the balance must be struck between this need and an unreasonable number of bargaining units. It is for that reason that the Board examines the facts of each case to determine whether the particular bargaining unit being sought is appropriate.

That said, we now turn to the question of what unit is appropriate. We begin our discussion by noting that the Union seeks a unit of public works employees, parks employees, the meter service technician, and the meter reader. The City contends this proposed unit is inappropriate. It argues that the parks employees, the meter service technician, and the meter reader do not have a community of interest with the public works employees. It therefore proposes a unit of just public works employees. There are 25 employees in the Union's proposed unit and 16 employees in the City's proposed unit. Thus, the first issue herein is whether the parks employees, the meter service technician, and the meter reader should be included in a unit with the public works employees.

Applying the foregoing criteria to the facts of this case, we find that the Union's proposed unit is appropriate. In our view, factors 1, 3 and 5 all point to this conclusion.

As to factor 1 (similarity in scale and manner of earnings), we note that all the employees in the Public Works and Parks Departments are maintenance workers except for the three crew chiefs and the two mechanics. The maintenance workers are sometimes identified by the division or department where they work. For example, the ones in the utilities division are known as line maintenance workers, the ones in the street division are known as street maintenance workers, and the ones in the Parks Department are known as parks maintenance workers. All these employees share a common classification, that being maintenance worker. All the maintenance workers have a similarity in their scale of earnings in that all are assigned to the

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<sup>1</sup> City of Poplar Bluff, Case No. UC 90-030 (SBM 1990) and Curators of the University of Missouri, d/b/a

same salary band on the City's pay scale, namely number 115. Thus, they also share a common salary range. While the 18 full-time maintenance workers are paid vastly different amounts within that range, this is attributable to the way the City has structured the salary band with a minimum and maximum rate. In our opinion, the fact that the parks maintenance workers share a common classification with the public works maintenance workers and are on the same salary band as them weighs in favor of their being included in the same unit. The other two employees which the Union seeks to include in the unit (namely the meter service technician and the meter reader) do not share either a common classification or a salary band with the maintenance workers. Be that as it may, their salary bands are somewhat comparable to the maintenance workers. The following shows this. The minimum salary for the meter service technician is only \$34 less than the minimum for a maintenance worker. Conversely, there is only a \$46 difference in the maximum pay for the meter service technician and the maintenance worker position. The difference in minimum salary between the meter reader and the maintenance worker position is \$123, while the difference in maximum salary is \$165. Due to the ranges which exist between the salary bands, a senior meter reader or meter service technician could be paid more than a junior maintenance worker. In fact, the current meter service technician makes more than eight of the maintenance workers. While the meter reader is admittedly the lowest paid employee in the group, we cannot justify excluding her from the unit on that basis alone. In our view, it makes sense to treat the meter reader and the meter service technician the same for purposes of unit inclusion because their jobs are so similar in nature.

As to factor 3 (similarity in the kinds of work performed), we note the following similarities in the work performed by the public works employees, parks employees, meter service technician, and meter reader. To begin with, all the employees in the Union's proposed unit spend most of the day working outdoors throughout the City. All their jobs require physical

activity. Second, the meter service technician and the meter reader begin their work day at the Public Works facility where they retrieve their trucks. They also end their work day at the same place, as do all the public works employees. Third, both the street maintenance workers and park maintenance workers mow grass, remove brush, and remove snow. Next, the employees in the Parks and Public Works Departments use many of the same hand tools and power equipment. Fifth, the line maintenance workers, the meter service technician, and the meter reader all work to maintain the City's water supply. Having just noted these similarities, we acknowledge there are also differences in the kind of work performed by the employees in the Union's proposed unit. However, after weighing all the similarities and differences which were noted in the Findings of Fact, we find that the similarities between these employees outweigh their differences.

As to factor 5 (frequency of contact or interchange among the employees), it is initially noted that there is no interchange of the employees in the proposed bargaining unit. In other words, employees are not transferred or moved from one department to another to help out. That said, there is contact between the employees in the Union's proposed unit. Some of the employees interact with each other on a daily basis; with others the contact is far less frequent. Overall though, we find that the level of contact between the employees in the Union's proposed unit is sufficient to pass muster. In so finding, we are relying on the following points. First, the Public Works and Parks Departments share equipment with each other. The Parks Department sometimes borrows the Public Works Department's heavy equipment, as well as an operator to operate it. Conversely, the Public Works Department sometimes borrows the Parks Department's light equipment. Second, employees in public works and parks have worked together side by side maintaining ball fields, constructing shelter houses, doing snow removal, mowing grass, setting up and dismantling the annual "Spring on the Square", and maintaining and repairing water lines feeding hydrants and drinking fountains in city parks. In other instances, public works employees

and parks employees work in succession on projects. For example, if line maintenance workers replace an existing water pipe in the ground, parks employees later follow up by covering up the trench and reseeding the area. Third, as previously noted, the line maintenance employees and the meter service technician deal with the city's water supply. They assist each other on a daily basis. Additionally, crew chief Beaty has worked on several meter projects with the meter service technician. The meter reader also has contact with the line maintenance employees, but to a lesser extent than the meter service technician. The meter reader and the line maintenance employees work together several times a month to dig out a meter or raise a meter, locate and blow out a curb box, or thaw out frozen meters in the winter. Finally, the meter service technician has some contact with the parks maintenance workers. This happens when the meter service technician assists the parks maintenance workers locate water meters at city parks and pump out meter pits. She also helps them diagnose problems with the water system in city parks. These examples of the contact between the public works employees, parks employees, the meter service technician and the meter reader convince us that they share a community of interest with each other.

Apart from the rationale expressed above, another reason we are willing to find the Union's proposed unit appropriate is that we see it as a unit of all blue collar city employees. Such units are relatively common and not inherently inappropriate. Insofar as we can tell from the City's organizational chart, there are no blue collar positions that are not included in the Union's proposed unit.

Having found the Union's proposed unit appropriate, attention is turned to the wording of the unit description. The Union's proposed wording is as follows:

Public Works, Line Maintenance, Streets and Utilities, Sewer and Water  
Parks and Recreation, Water Meter Readers and Service Employees of  
Finance Department, excluding clerical employees, office employees,  
supervisors, and guards as defined by the Act.

In reviewing the Union's proposed unit description, we are concerned that its wording might raise questions about the unit's inclusions and exclusions. That being so, we have decided to make the following comments about the scope of the unit we are finding appropriate herein. As was noted in the Findings of Fact, the Public Works and Parks Department each have several divisions. The only divisions from the Public Works Department which are involved in this case are the utilities and streets divisions. Thus, just those two divisions from that department are included in the instant unit. Likewise, the only divisions from the Parks Department which are involved in this case are the maintenance and operations divisions. Thus, just those two divisions from that department are included in the instant unit. Given the foregoing, we have decided to reword the Union's unit description language to specifically identify these points. We have also decided to specifically name the meter service technician as a named inclusion rather than use the generic phrase "service employees of the Finance Department". We have therefore worded the unit description language as follows:

All public works street division and utilities division employees, all parks maintenance and operations divisions employees, the meter reader and the meter service technician, and excluding all other city employees.

The question of whether the crew chiefs are included in or excluded from this unit will be addressed next.

## **DISCUSSION CONCERNING SUPERVISORY STATUS**

As just noted, the remaining issue is whether the three crew chiefs should be included in or excluded from the above-described bargaining unit. The Union contends they should be included while the City wants them excluded.

The Missouri Public Sector Labor Law gives certain employees the right to form and join labor organizations and to present proposals to their employers relative to conditions of employment. Although supervisors are not specifically excluded from the law's coverage, case law from this Board and the courts have carved out such an exclusion. See Golden Valley Memorial Hospital v. Missouri State Board of Mediation, 559 S.W.2d(Mo. App. 1977) and St. Louis Fire Fighters Association, Local 73 v. City of St. Louis, Case No. 76-013 (SBM 1976). The rationale for the exclusion is that supervisors do not have a community of interest with, and therefore are not appropriately included in a bargaining unit comprised of, the employees they supervise. This exclusion means that supervisors cannot be included in the same bargaining unit as the employees they supervise. Since a dispute exists here as to whether the three crew chiefs "supervise" the employees on their crew, it is necessary for us to determine if such is, in fact, the case.

This Board has traditionally used the following indicia to determine supervisory status:

- (1) The authority to effectively recommend the hiring, promotion, transfer, discipline or discharge of employees;
- (2) The authority to direct and assign the work force, including a consideration of the amount of independent judgment and discretion exercised in such matters;
- (3) The number of employees supervised and the number of other persons exercising greater, similar and lesser authority over the same employees;
- (4) The level of pay, including an evaluation of whether the person is paid for his or her skills or for his or her supervision of employees;
- (5) Whether the person is primarily supervising an activity or primarily supervising employees; and

- (6) Whether the person is a working supervisor or whether he or she spends a substantial majority of his or her time supervising employees.<sup>2</sup>

We will apply those factors here as well. Not all of the above factors need to be present for a position to be found supervisory. Moreover, no one factor is determinative. Instead, the inquiry in each case is whether these factors are present in sufficient combination and degree to warrant the conclusion that the position is supervisory.<sup>3</sup>

Applying these criteria to the three crew chiefs at issue here, we conclude that none of them meet this supervisory test. Our analysis follows.

Attention is focused initially on factor (1). It is undisputed that the crew chiefs are not empowered to hire, fire, promote, or transfer employees on their volition and have not done so. That said, the crew chiefs evaluate employees and play a role in hiring and disciplining employees. An analysis of their role in those areas follows.

With regard to evaluations, the crew chiefs annually evaluate the members of their crew. This involves completing a preprinted form wherein they rate the employee's performance in a variety of areas. The crew chiefs complete these evaluations without receiving any input from anyone in management concerning how they should rate the employee. The department superintendent completes an identical evaluation for the same employee. Thus, each employee is evaluated by both their crew chief and the department superintendent. These two evaluations then go to the Personnel Department which processes them through a computer program which produces a mathematical score. The program weights the crew chief's input at 60% and the superintendent's input at 40%. Since the crew chief's input is weighted more heavily than the superintendent's, it is apparent that the crew chief's input means more than the superintendent's. The crew chief's ratings are therefore important. However, another person's opinion is even more important than the crew chief's. That person is the department head. They have the final say on

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<sup>2</sup> See, for example, City of St. Louis Building Division, Case No. R 96-001(SBM 1996).

<sup>3</sup> See, for example, Callaway County Ambulance District, Case No. R 96-032(SBM 1996).



evaluations. The record indicates that the department head has raised and lowered evaluations completed by the crew chief and superintendent. These evaluations are significant because the Employer uses them to justify whatever salary increase is ultimately given to the employee. However, crew chiefs do not decide how much of a raise is given to an employee; the city administrator does that.

With regard to hirings, it has already been noted that crew chiefs do not hire on their own authority. That said, the crew chiefs have been involved in the hiring process. The following shows this. First, they review the job applications which are received and decide which of the applicants they want to interview. However, the department superintendent does not defer to their judgment concerning who survives this initial cut. Instead, he also performs the very same task (i.e. he goes through the same list of applicants and decides who he wants to interview). If the superintendent wants to add someone to the interview list compiled by the crew chiefs, he can do so. Second, the crew chiefs serve on interview panels which interview the selected candidates. Third, following the interviews the interview panel reaches a consensus on a finalist. While the record does not indicate how this occurs, we infer from the record that the crew chiefs are not empowered to overrule the wishes of the department superintendent concerning the selection of a finalist. The department head then takes the interview panel's hiring recommendation to the city administrator who makes the actual hiring decision. The city administrator never meets with the crew chiefs to discuss the hiring or personally hears their views concerning same.

With respect to discipline, it has already been noted that crew chiefs cannot discharge employees. They cannot suspend them either. If a crew chief believes an employee has performance problems or has engaged in inappropriate conduct, their role in the disciplinary process is to report the matter to the department superintendent who then investigates the matter. If any discipline is ultimately imposed on the employee, it would come from the department

superintendent and/or the department head; not the crew chief. While the crew chiefs have on occasions made recommendations concerning discipline, their recommendations have not always been followed. This convinces us that crew chiefs play a very minor role in the disciplining of employees.

Attention is not turned to factor (2), the authority to direct and assign the workforce. There is no question that crew chiefs are in immediate charge of their crew members and direct and oversee them on a daily basis. They also assign them work on a daily basis. In the Public Works Department, the crew chiefs select work to be done from a pre-determined list of work projects known as the departmental work plan. For example, crew chief Pence could decide that one of his crews would do street striping. On occasion though, the department superintendent directs that certain projects on the departmental work plan be given priority treatment.. When this happens, the department superintendent decides what work is done, not the crew chief. After the work project is finalized, the crew chiefs direct their crews to work on that project. In making these assignments, the crew chiefs do not give crew members detailed instructions about how they are to do the work. This is because the employees already know how to do the work. Additionally, the crew chiefs do not direct specific employees to do specific tasks. This is because the employees on the crew decide for themselves which employee does which specific job. Thus, the employees rotate among the various jobs involved on the project so that one employee does not get stuck doing the same thing. In our view, the assignment of work involved here is of a routine nature and does not involve more than limited independent judgment.

The evidence on the first part of the third factor (i.e. number of employees supervised) established that Carney oversees seven employees (four full-time and three part-time), Beaty oversees seven employees (two of whom he shares oversight with Pence) and Pence oversees eleven employees (two of whom he shares oversight with Beaty). Carney's four full-time

maintenance workers generally work on their own and are not combined into crews. Beaty's five maintenance workers are divided into two crews with two or three employees in each. Pence's nine maintenance workers are usually divided into two or three crews with varying numbers of employees in each. The evidence on the second part of the third factor (i.e. the number of other persons exercising greater, similar, or lesser authority with respect to the same employees) demonstrated that in both the Public Works and Parks Departments, there are two layers of authority over the crew chief: the department superintendent and the department head. Both are above the crew chiefs in their department's organizational structure. Additionally, both can exercise more authority over their department's employees than the crew chiefs can. Finally, the city administrator is above them all. Organizationally speaking then, the crew chiefs have three levels of authority over them. Including Carney in the bargaining unit means that superintendent Sinn supervises a total of eight employees, of which just five are full-time. A ratio of one supervisor supervising eight employees is well within the bounds of acceptability. Including Pence and Beaty in the bargaining unit means that superintendent Blackburn supervises a total of 18 employees including the two mechanics. While a ratio of one supervisor supervising 18 employees is admittedly high, we have previously found that a ratio of one supervisor supervising 16 employees passes muster.<sup>4</sup>

With regard to the level of pay (factor 4), the evidence shows that all of the current crew chiefs are paid more than their crew members. The dollar difference between the crew chief's pay and the highest crew members' pay is as follows: Carney makes \$175 more a month than the highest paid Parks maintenance worker and Pence and Beaty both make \$411 more a month than their highest paid maintenance workers. Certainly the dollar spread between what Pence and Beaty make and their crew members make is substantial. Be that as it may, it cannot be overlooked that due to the way the City's pay plan is structured with salary bands containing a

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<sup>4</sup> City of Harrisonville, Case No. R 95-034(SBM, 1995).

minimum and a maximum, it is possible for a senior maintenance worker who is at the top of the scale to be paid about \$225 a month more than a starting crew chief. The situation just noted is not merely theoretical; the records indicates it has occurred.

Finally, with regard to factors (5) and (6), the record establishes that the crew chiefs ensure that the work they assign to their crew members is performed satisfactorily and in a timely fashion. They do this by periodically reviewing the work during the course of the day. For example, in the Parks Department, the full-time employees usually work alone and the crew chief checks with them several times a day for five minutes at a time to see how the work is progressing. Generally though, once maintenance workers are assigned a project from the departmental work plan, they know what tasks need to be performed and how to perform them. When the crew chiefs are at the job site with their crew members, they do not simply stand around and watch them work. Instead, they work side by side with the maintenance workers doing the same hands-on work as them and using the same tools, machines and equipment as the maintenance workers use. While the amount of time spend doing hands-on work varies with each crew chief (Carney at about 50%, Beaty about 40%, and Pence about 30%), in our view the amount of time spent doing hands-on work cannot be characterized as insignificant. We therefore conclude that the crew chiefs primarily supervise the work performed by their crew members as opposed to supervising those employees for labor relations purposes.

To summarize then, the records indicates that the three crew chiefs perform the following supervisory functions: 1) they are in charge of their crew on a daily basis, assign them work and monitor their work performance; 2) annually conduct performance evaluations of the employees on their crew; 3) screen the job applications which are received and decide which applicants to interview, and serve on interview panels which interview the candidates and make a hiring recommendation; 4) can issue verbal and written warnings to employees and can

recommend additional discipline; 5) assign overtime; and 6) approve some vacations. However, the factors just listed are not enough to qualify them as supervisors. Overall, they do not exercise sufficient supervisory authority in such combination and degree to make them supervisors. We therefore conclude that in this specific case, the crew chiefs are not supervisors.

### **ORDER**

The State Board of Mediation finds that the Union's proposed bargaining unit is appropriate. The State Board of Mediation further finds that the three crew chiefs are not supervisory employees. They are therefore included in that unit. We hereby order an election among the employees in the following unit:

All public works street division and utilities division employees including the crew chiefs, all parks maintenance and operations division employees including the crew chief, the meter reader and the meter service technician, and excluding all other city employees.

### **DIRECTION OF ELECTION**

An election by secret ballot shall be conducted by the Chairman of the State Board of Mediation, or its designated representative, among the employees in the aforementioned bargaining unit, as early as possible, but no later than 45 days from the date below. The exact time and place will be set forth in the notice of election to be issued subsequently, subject to the Board's rules and regulations. The employees eligible to vote are those in the unit who were employed during the payroll period immediately preceding the date below, including employees who did not work during the period because of vacation or illness. Those employees ineligible to vote are those who quit or were discharged since the designated payroll period and who have not been rehired or reinstated before the election. Those eligible to vote shall vote whether or not they desire to have Teamsters, Local 41 as their exclusive bargaining representative.

The City shall submit to the Chairman of the State Board of Mediation, as well as to the Union, within fourteen calendar days from the date of this decision, an alphabetical list of manes

and addresses of employees in the aforementioned bargaining unit who were employed during the payroll period immediately preceding the date of this decision.

Signed this 6th day of October, 1997.

STATE BOARD OF MEDIATION

/s/ Francis R. Brady  
Francis R. Brady, Chairman

(SEAL)

/s/ LeRoy Kraemer  
LeRoy Kraemer, Employee Member

/s/ Linda Cooper  
Linda Cooper, Employer Member